

BARRY E. HINKLE, Bar No. 071223
CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
Telephone (510) 337-1001
Facsimile (510) 337-1023

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Now come the parties hereto, The Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California et al., Plaintiffs, and Ken Douglas Schuld, et al., Defendants, and submit this Joint Case Management Statement.

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1 **1. Jurisdiction and Service**

2 Plaintiffs assert this Court has jurisdiction because this action is brought pursuant to
 3 section 502 of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. § 1132), and
 4 section 301 of the Labor Management Relations Act (LMRA) (29 U.S.C. § 185).

5 Defendant was served January 3, 2008.

6 **2. Facts**

7 Plaintiffs assert that Defendant was party to a Collective Bargaining Agreement ("CBA")
 8 with the Northern District Council of Laborers ("the Union"), pursuant to which Defendant was
 9 obligated to make trust fund contributions on behalf of its employees who performed work
 10 covered by the CBA. Plaintiffs assert that Defendant failed to make contributions to the Trust
 11 Fund on behalf of Defendant's employees pursuant to the CBA. Defendant denies these
 12 allegations.

13 **3. Legal Issues**

14 The parties have identified the following primary legal issues: (1) whether the CBA was
 15 binding on Defendant during the relevant time period, (2) whether hours claimed by Plaintiff for
 16 work performed by individual employees of Defendant was covered by the CBA; and (3) whether
 17 Defendant failed to make contributions for any covered work performed by employees as required
 18 by the CBA.

19 **4. Motions**

20 At this time, no motions are pending in this matter. Defendant does not presently
 21 anticipate the need to file any motions. If the case does not settle, Plaintiffs anticipate filing a
 22 summary judgment motion.

23 **5. Amendment of Pleadings**

24 At this time, the parties do not anticipate amending the pleadings.

25 **6. Evidence Preservation**

26 Defendant has taken steps to preserve all documentary evidence in place at the time of
 27 service of the lawsuit, including electronically-recorded information. Defendant is a small
 28 company whose payroll records are maintained by a bookkeeper on a single computer. Defendant

1 has instructed its bookkeeper to retain such records during the pendency of this action.
 2 Defendant's bookkeeper has no regular program of document destruction.
 3

4 **7. Disclosures**

5 Plaintiff and Defendant have made full disclosures as required.
 6

7 **8. Discovery**

8 No formal discovery has been taken by either party to date. On a number of occasions,
 9 Plaintiffs have informally requested documents from Defendants that substantiate their claims.
 10 The parties agreed that Defendant would produce such documents pursuant to their settlement
 11 conference on July 21, 2008. Defendants have not produced such documents, but anticipate doing
 12 so on September 16, 2008.

13 If the case does not settle, Plaintiffs and Defendant intend to conduct discovery, including
 14 written discovery and depositions.

15 **9. Class Actions**

16 This matter is not a class action.

17 **10. Related Cases**

18 There are no related cases.

19 **11. Relief**

20 Plaintiffs seek an order compelling Defendant to submit to a full audit by auditors selected
 21 by the Trust Funds, that Defendant pay contributions found to be due and owing from said audit,
 22 plus interest, liquidated damages and attorneys' fees and costs.

23 Defendant denies liability for any of the relief claimed by Plaintiffs.

24 **12. Settlement and ADR**

25 Both parties have complied with ADR Local Rule 3-5. The parties held an initial
 26 settlement conference on July 21, 2008 and agreed to another day of settlement discussions once
 27 Defendants produce the documents requested by Plaintiffs.

28 **13. Consent to Magistrate Judge For All Purposes**

The parties do not consent to the assignment of this case to a magistrate judge.

14. **Other References**

2 Plaintiffs and Defendant does not believe the case is appropriate for binding arbitration,
 3 reference to a Special Master, or the Judicial Panel on Multidistrict Litigation.

15. **Narrowing of Issues**

5 Because the parties have yet to conduct discovery, they are not aware of any opportunities
 6 to narrow issues.

7 16. **Expedited Schedule**

8 The parties do not believe this matter is appropriate for an expedited schedule or
 9 streamlined procedures.

10 17. **Scheduling**

11 The parties propose the following dates: trial in May, 2009; pre-trial conference in late
 12 April, 2009; cutoff of expert disclosure and non-expert discovery in early March, 2009; cutoff of
 13 expert discovery in late March 2009; hearing for dispositive motions in early April, 2009.

14 18. **Trial**

15 Neither Plaintiffs nor Defendant has requested a jury trial.

16 20. **Service List of Counsel for Plaintiffs:**

17 BARRY E. HINKLE, Bar No. 071223
 18 PATRICIA DAVIS, Bar No. 179074
 19 CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227
 20 WEINBERG, ROGER & ROSENFELD
 21 A Professional Corporation
 22 1001 Marina Village Parkway, Suite 200
 23 Alameda, California 94501-1091
 24 Telephone: (510) 337-1001
 25 Fax: (510) 337-1023

1 21. Service List of Counsel for Defendants:

2 RICHARD SAX, Bar No. 80632

3 Law Offices of Richard Sax

4 448 Sebastopol Avenue

5 Santa Rosa, CA 94501

6 Phone: (707) 525-1824

7 Fax: (707) 525-8119

8 Dated: September 12, 2008

9 LAW OFFICES OF RICHARD SAX

10 /s/Richard Sax

11 Richard Sax
12 Attorney for Defendants

13 Dated: September 12, 2008.

14 WEINBERG, ROGER & ROSENFELD
15 A Professional Corporation

16 By: /s/Concepción E. Lozano-Batista
17 CONCEPCIÓN E. LOZANO-BATISTA
18 Attorney for Plaintiffs

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